IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**APPEAL NO. 1349 OF 1999**

IN

MISC. PETITION NO. 64 OF 1990

1. Madanlal Mohanlal Bohra )
2. Shriniwas Madanlal Bohra )
3. Rajendra Madanlal Bohra )
all trading as M/s. Shriniwas Purshottam)
& Co. at 33, 9/511, Ichalkaranji, Dist. )
Kolhapur, Maharashtra. )..Appellants
(Org.Respdts Nos.2A to 2C)

Versus

1. Century Textiles & Industries Ltd. )
a Company incorporated under the )
provisions of Act VI of 1882 of the )
Legislative Council of India having )
its registered office Centry Bhavan, )
Dr. Annie Besant Road, Worli, )
Bombay 400 023. )

2. The Registrar of Trade Marks )

having his office at Trade Marks )
Registry, Central Building, M.K.Road, )
Mumbai 400 020. )

3. Gunvanti Goculdas Ved )

4. Geetabai Madanlal Bohra, )

5. Ghanshyamdas Hanumandas Purohit )
Trading as Raj Prakash Trading Co. )
290-A, Bunglow Road, Ichalkaranji, )
Dist. Kolhapur, Maharashtra )..Respondents
(Orig.Petitioner and
Respoondents Nos.1 to 4)

Mr. Rahul Chitnis with Mr. Hemang J. Engineer with Mr. Deepal J. Thakar i/b. Gordhandas & Fozdar, Advocates for Appellants.
Mr. V.R.Dhond i/b. Ms. S.V.Senjit for Respondents.

**CORAM: D.K.DESHMUKH &**
**J.H.BHATIA,JJ.**
**DATE : 26th July, 2007.**

**P.C.**

1. This Appeal is directed against the order dated 17/18th August, 1999 passed by the learned Single Judge of this Court in Misc. Petition No.64 of 1990

2. By that order, the learned Single Judge granted Misc. Petition taken out by the present respondent No.1 in terms of prayer clause (a). The Misc. Petition was filed by the present respondent No.1 challenging the order passed by the Assistant Registrar of Trade Marks dated 8th May, 1990. By that order, the Assistant Registrar had dismissed the Opposition filed by the respondents with the Registrar of trade Marks to the registration of the trade mark of the present appellants. The present appellants were seeking registration of their trade mark "PREMSUKH" under clause 24 in relation to "Bleached Dhoties". The Registrar found that the trade mark of the appellants, viz. "PREMSUKH" is deceptively similar to the registered trade mark of the respondents "PARAMSUKH" in relation to the same kind of goods. The Registrar, however, in exercise of his discretion decided to register the trade mark of the appellants because he found that the adoption and use of the trade mark by the appellants is honest and concurrent and rejected the aforesaid Opposition of the respondents. The learned Single Judge, by the order impugned in the Appeal, has set

aside the order passed by the Assistant Registrar of Trade Marks. The learned Single Judge has held that the adoption of the mark by the appellants was not honest and, therefore, the Assistant Registrar was not justified in exercising his discretion in favour of registration of that trade mark.

3. The learned Counsel appearing for the appellants submits that the adoption of the mark by the appellants was honest. He submits that for the purpose of exercise of discretion by the Registrar, what is to be found is whether the use of the trade mark was honest and concurrent. According to him, the learned Single Judge committed an error in holding that not only use but adoption also has to be honest. He relied on the Judgment of the House of Lords in the case of **Hammermill Paper Co. v. Alex Pirie & Sons Ld.**

4. The learned Counsel appearing for the respondents, on the other hand, submits that the order passed by the learned Single Judge is a valid order and therefore there is no reason for this Court to interfere with it. He submits that the adoption of the mark by the appellants was not honest. He further submits that admittedly, the respondents' trade mark "PARAMSUKH" in relation to "dhoties" was registered on 29th August, 1942 and the sales figures disclosed by the respondents

show that the sales of the goods under that trade mark run into crores of rupees. Therefore, it is impossible that the appellants who were proposing to adopt and use the mark in relation to the same kind of goods were unaware of the mark of the respondents. The learned Counsel pointed out that the adoption of the mark by the appellants is not honest therefore use of the mark cannot be said to be honest. He relied on the Judgment of the Division Bench of this Court in the case of **Bal Pharma Ltd. vs. Centaur Laboratores Pvt.Ltd. & Anr.** reported in 2002 (24) PTC 226.

5. It is clear from the trecord that the Registrar, after finding that the mark of the appellants was disceptively similar to the mark of the respondents permitted registration of the mark of the appellants in exercise of his discretion on recording a finding that there is an honest and concurrent user of the mark by the appellants. The Registrar also found that the adoption of the mark was honest. But the finding of the Registrar that the adoption of the mark is honest is based only on the meaning of the two marks. The Registrar also found that the adoption of the mark is honest only because meaning of two words is different. The finding is recorded by the Registrar himself that the mark of the appellants is deceptively similar to the mark of the respondents. According to the appellants,

before adopting the mark, they had carried out the market survey and the market survey did not show that the goods of the respondents were being sold under the mark "PARAMSUKH" in the market and, therefore, they adopt the mark "PREMSUKH". What is pertinent to be noted is that the appellants were called upon to produce the result of the market survey conducted by them but they could not produce it. It is clear that in view of the undisputed position that the mark of the respondent was registered in 1942 in relation to the same kind of goods and the sales of goods under the mark of respondents run into crores of rupees, it is not possible that market survey would not show that the goods of the respondents are not sold under the mark ""PARAMSUKH". When according to appellants before adopting the mark they had conducted market survey, the Registrar was not justified in recording the finding that the adoption of the mark by the appellants was honest only because the meaning of the two words is different, without requiring the appellants to produce the result of the survey. In order that user of a mark can be said to be honest, first it has to be established that the adoption was honest. If the adoption is not honest, it is difficult that user would be honest. In our opinion, the adoption of the mark by the appellants cannot be termed as "honest". Perusal of the Judgment of the learned Single Judge shows that he has considered

all the aspects of the matter in detail and has recorded his finding. We see no reason to interfere with the order because we do not see any error in any of the findings recorded by the learned Single Judge.

6. So far as the Judgment of the House of Lords, referred to above, relied on by the learned Counsel appearing for the appellants is concerned, perusal of that judgment shows that several factors were taken into consideration by the House of Lords, including the name of the Mill where the product of the respondents was manufactured in considering whether the adoption of the mark by the respondents is honest. Perusal of that judgment shows that the findings recorded in that judgment are based on appreciation of the material on record of that case. Whether adoption of a mark is honest or not is to be decided on the facts and circumstances of each case. That judgment does not help ther appellants. The appellants have not been able to produce any material on record to show that the adoption of the mark by them was honest. The material available on record, on the contrary, indicates that the adoption was not honest.

7. Taking overall view of the matter, therefore, we see no reason to interfere with the impugned judgment. The Appeal therefore fails and is dismissed. No order

as to costs.

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**(D.K.DESHMUKH,J.)**

**(J.H.BHATIA,J.)**